none the less true when the plaintiff is in ignorance without fault on his part than when his ignorance is caused by the fraudulent concealment of the true state of affairs by the act of the defendant, as in the Ohio and Pennsylvania cases cited above. The plaintiff should not be barred of his right unless he knows of its existence and can take legal steps to vindicate it. As the decision in the instant case is by a divided court, it might be possible that the Ohio court would change its ruling on this point if the issue were squarely presented to it. J. H. D.

LANDLORD AND TENANT—TERMINATION OF TENANCIES FROM YEAR TO YEAR CREATED BY HOLDING OVER.—The plaintiff was a tenant in possession of an office suite held under a three years' written lease at a yearly rental, payable in equal monthly installments. He held over for nearly thirteen years, paying rent regularly. Section 11812, Compiled Laws of Michigan, 1915, reads: "And in all cases of tenancy from year to year, a notice to quit, given at any time, shall be sufficient to terminate said lease at the expiration of one year from the time of the service of such notice." It was *held* (two judges dissenting), that the landlord could terminate the plaintiff's tenancy at the end of the year period, without notice. The injunction asked for was refused. *Rice* v. *Atkinson, Deacon, Elliott Co.* (1921), 215 Mich. 371.

In the majority opinion we find the following pertinent language: "While a tenant paying an annual rental who holds over after his term has expired with the acquiescence of his landlord is frequently called a tenant from year to year, I am persuaded that such tenancy does not possess all the attributes of one from year to year. * * * The question, however, is one of authorities, and to them I shall now call attention." In considering the authorities, the court first quotes from CYC.: "In some cases a distinction seems to have been made between those tenancies from year to year arising from leases for indefinite terms, and those arising from a holding over by the tenant after the expiration of a lease for a specified term. Thus, it has been held that a tenant who occupies demised premises for several years after the termination of his lease creates each year a new term expiring at the close of the current year, and requiring no notice for its determination." 24 CYC. 1381. Two cases are there cited in support of that view. *Adams* v. *City of Cohoes,* 127 N. Y. 175; *Gladwell* v. *Holcomb,* 60 Ohio St. 427. So far as the language used by the author in CYC. is concerned, it must be noted that he said no more than that "some cases" have made a distinction. The next text-writer quoted is McAdam, and it must be conceded that he supports the view taken by the majority in the principal case. MCADAM ON LANDLORD AND TENANT (Ed. 4), p. 667. Three New York cases are cited by McAdam in support of his view. *Adams* v. *City of Cohoes, supra; Park* v. *Castle,* 19 How. Pr. 29; *Rorbach* v. *Crossett,* 46 St. R. 426, [19 N. Y. Supp. 450]. The court next relies upon Taylor: "When a tenant for a year, or any other ascertained period, holds over without permission, no notice is of course necessary, since, without some fresh agreement, express or implied, the tenancy by its own terms is at an end." 2 TAYLOR ON LANDLORD AND TENANT (Ed. 9), p. 52. Analysis of that statement will certainly reveal that

it is not in point. On the same page Taylor says: "A tenant for years, also, who holds over, so as to create a tenancy from year to year, by implication and without any specific act of recognition by the landlord, is entitled to notice before he can be ejected." It will be necessary to quote only a part of the court's extract from the next text-writer: "A distinction has been made by the authorities as to the necessity for a notice to quit between that class of cases where the tenancy is of an indefinite duration or for an indefinite number of years, as was the universal character of these tenancies from year to year in their original condition, and the class of tenancies from year to year which arises when a tenant holds over with the consent of his landlord after the expiration of a definite term. * * * In theory a tenant from year to year under an indeterminate lease has in each current year a growing interest in the year next ensuing, which cannot be arbitrarily destroyed by his landlord without notice to quit. Where, however, a tenant holds over after the expiration of a definite term, and by so doing creates a tenancy from year to year, no year of the tenancy thus created by holding over arises out of or is connected with the year which precedes it, but each year of the holding over creates a new and separate contract for a year between the parties which, being for a fixed and definite period, may, according to the rule, be terminated without notice." 1 UNDERHILL ON LANDLORD AND TENANT, p. 157. It is rather obvious that the extract from Underhill can mean no more than that there is a division of authorities upon the point involved. In that connection, Underhill cites two cases which support the rule and two opposed to it. *Gladwell* v. *Holcomb, supra; Adams* v. *City of Cohoes, supra* (accord); *Peehl* v. *Bumbalek,* 99 Wis. 62; *Roberson* v. *Simons,* 109 Ga. 360 (*contra*). The court's last text citation is to the same effect as that from Underhill. 16 RULING CASE LAW 1167. *Gladwell* v. *Holcomb* and a note in 25 L. R. A. (n. s.) 849 are cited in R. C. L. Examination of the note in L. R. A. reveals no new authorities. A few pages beyond the court's quotation from R. C. L. appears the following: "Still, in case of a tenancy for a term of years, if the tenant holds over with the consent of the landlord, a new tenancy from year to year may arise which will necessitate a notice to quit to terminate it." 16 R. C. L. 1173.

An appraisal of the authoritative value of the above extracts from the text-writers will make it necessary to examine the cases cited by them. The New York cases will be first considered. In *Park* v. *Castle, supra,* there was a verbal lease for one year, and the tenant held over for about eleven months, paying rent. The landlord then gave notice that he would terminate the lease at the end of that year. The tenant claimed the right to six months' notice as a tenant from year to year. The court said: "There can be no doubt but that the defendant, by holding over after the expiration of the year for which he hired the farm, without any new agreement, but by the permission of the plaintiff, became a tenant from year to year. The authorities agree in regard to this proposition." The court decided that notice to terminate at the end of the period was not necessary, but placed its decision squarely upon its interpretation of a New York statute. "I think the term of a tenant, from year to year, should be regarded as ended, within the

meaning of the Revised Statutes authorizing the summary removal of tenants, at the expiration of each year he holds over the original term. It is so, in fact, especially since no verbal contract for leasing is good for a longer period than one year. (2 R. S., 135, §8.)" *Rorbach* v. *Crossett,* 19 N. Y. Supp. 450, and *Adams* v. *City of Cohoes, supra* (the most cited New York case), are to the same effect as *Park* v. *Castle,* and they rely upon that case as authority. The question of "notice to quit" was not directly involved in the case of *Kennedy* v. *City of New York,* 196 N. Y. 19. We are justified, then, in dismissing the New York cases as irrelevant, in that they were decided under a statute which the courts considered obviated the necessity of notice to quit.

Gladwell v. *Holcomb, supra,* is considered to be the *leading case* in point. There was a written lease for one year in that case and the tenant held over for six years, paying rent. Four months before the end of this six years of holding over the landlord gave notice that the tenant should quit at the end of the period. The court took the view that a tenancy from year to year was created by the holding over, but that it could be terminated without notice, advancing the theory that this sort of tenancy from year to year was in fact successive tenancies for year periods. The court recognized that this was a case of first instance in Ohio, and it cited no other case squarely in point. Its decision seems to have been prompted by a consideration other than that of a rule concerning notice. "If six months, or any number of months notice, before the end of the year were required to terminate the tenancy, then, upon the failure to give such notice, a new implied agreement, with the tenant in possession under a former one, would immediately arise, for another year commencing in the future, which could not less certainly be obnoxious to the statute [of frauds] than an express parol agreement for a future lease; and an agreement of that kind not accompanied with actual possession taken under it has been repeatedly held invalid."

The difficulty which the courts had with the Statute of Frauds, in *Park* v. *Castle* and *Gladwell* v. *Holcomb,* seems not to have troubled most of the courts. With reference to tenancies from year to year created by holding over, it has been said: "Promises of this character are implied by *law* from the acts of the parties, rather than from any supposed special agreement between them. They do not, therefore, come within the evil of the statute of frauds, and are commonly adjudged to be excepted from its operation." *Singer Manufacturing Co.* v. *Sayre,* 75 Ala. 270.

Turning to the Michigan decisions, the court cites one case which it considers to be directly in point. *Teft* v. *Hinchman,* 76 Mich. 672. In that case the tenant held under a verbal lease for two years. At the expiration of this term the landlord gave notice to quit. Tenancy from year to year is not even mentioned in the opinion. Although it is not clear, it seems that the court was of the opinion that the holding for the second year was valid by reason of the verbal lease plus an actual occupation for the period of the lease. Judge Morse said: "The second year Hinchman was holding the same as under a verbal lease for one year. At the end of it he required no notice to terminate it." What is said in a later Michigan case would

seem to indicate that the Michigan court considers that a verbal lease for more than a year, plus actual occupation for the full period, will make a valid lease for the full term, at least so far as to obviate the necessity of a notice to terminate at the end of the term for which the verbal lease was made. *Barlum* v. *Berger,* 125 Mich. 504. In that case there was a verbal lease for a five-year period, reserving a monthly rent. The tenant held over, paying rent each month. The court said: "This was not a tenancy from year to year. It was a tenancy continuing five years from June 1, 1894, and terminating June 1, 1899. While the agreement was not in writing, yet it was fully performed by the parties, and therefore cannot now be treated as a void lease." It was held that the paying of a monthly rent after the expiration of the term created a tenancy from month to month and the tenant was entitled to one month's notice to quit as provided for by statute in the case of tenancies from month to month. In *Ganson* v. *Baldwin,* 93 Mich. 217, Morse, C. J., said: "This agreement, however, as testified to by complainant, was good for a year, and, while acquiesced in by her, the defendant must be considered as holding from year to year. *Schneider* v. *Lord,* 62 Mich. 141; *Huntington* v. *Parkhurst,* 87 *id.* 38. The defendant was therefore entitled to a year's notice to quit." It is a very significant fact that this statement of the rule comes from the same judge who wrote the opinion in *Teft* v. *Hinchman, supra.* The cases and text-writers have not cited *Teft* v. *Hinchman* as supporting the rule contended for in the principal case.

Tenancies from year to year are generally held to arise in three types of cases: 1. Expressly. 2. Where the tenant enters and holds under a lease made void by the statute of frauds. 3. Where the tenant holds over after the expiration of a lease for years. *Teft* v. *Hinchman, supra,* may be considered as a case of the second type, and even if the Michigan court had expressly characterized the term in question as a tenancy from year to year, it could have found authority to the effect that such a tenancy initiated under a void lease could be terminated by either party to it, without notice, at the time when the void lease would expire by its terms. TIFFANY ON LANDLORD AND TENANT, pp. 250, 251.

A distinction between tenancies from year to year, such as that made by Underhill (see extract from Underhill, *ante*), on the theory that "a tenant from year to year under an indeterminate lease has in each current year a growing interest in the year next ensuing, which cannot be arbitrarily destroyed by his landlord without notice to quit," would seem to be very hard to justify, in that the right and obligation to hold for another year comes into being by operation of law at the moment when the time for giving the six months' notice to quit expires. The same error is found in *Gladwell* v. *Holcomb* and 16 R. C. L., p. 1167.

It is to be regretted that the court, in the principal case, did not have before it the opinion of the best recent text-writer. Mr. Tiffany says: "The weight of authority is to the effect that if the previous tenancy was for one or more years, the new tenancy thus created 'by implication' is, presumptively, one from year to year." TIFFANY ON LANDLORD AND TENANT, p. 1482.

He cites cases from England and *eighteen* of our states, including Michigan, in support. Again: "Conceding that the new tenancy, created by a permissive holding over, is in the particular case periodic, it can, by the weight of authority, be determined only by notice, as in the case of a similar periodic tenancy otherwise created." *Id.*, p. 1487. Here cases from *eight* states are cited. Tiffany observes that *Gladwell* v. *Holcomb, supra,* is *contra. Id.*, p. 1488. An examination of the cases cited by Tiffany discloses that in all of those jurisdictions he has really found authority for his conclusions.

Concerning the origin of tenancies from year to year, Lord Kenyon, C. J., said in *Doe* v. *Porter,* 3 D. & E. *13: "The tenancy from year to year succeeded to the old tenancy at will, which was attended with many inconveniences. And in order to obviate them the courts very early raised an implied contract for a year, and added that the tenant could not be removed at the end of the year without receiving six months' previous notice." An old but very high authority deciding the question raised in the principal case is *Right* v. *Darby* (1786), 1 Term Rep. 159, in which Lord Mansfield, C. J., said: "If there be a lease for a year, and by consent of both parties the tenant continue in possession afterwards, the law implies a tacit renovation of the contract. They are supposed to have renewed the old agreement, which was to hold for a year. But then it is necessary for the sake of convenience, that, if either party should be inclined to change his mind, he should give the other half a year's notice before the expiration of the next *or any following year.*" In the same case Buller, J., observes that the same rule applies to houses as applies to lands, and with reference to notice to quit says: "This doctrine was laid down as early as the reign of Henry the Eighth."

In the principal case the court might have advanced *good reasons* for abrogating the well-settled rule requiring "notice to quit" in the case of tenancies from year to year created by holding over; but if the question is really "one of authorities," as the court stated, it is certainly difficult to justify its decision. G. S.

OPERATION AND EFFECT OF RECORDING.—While the operation of the recording acts is not uncommonly said to result in a preference of the earlier recorded instrument on the ground that under the circumstances the later grantee takes "with notice," the true view in the normal case would seem to be that the earlier grantee is preferred because priority in time gives priority in right—and by recording, he has done all that is required to *preserve* that favored position.[1] Recording does not ordinarily *give* preference, it merely *safeguards* priority. Reference is here made to the normal case because it is, of course, true that there are certain special cases, not necessary to notice here, in which, independently of the recording acts, priority in time does not necessarily give priority in right. And there are other cases, one type of which will be discussed herein, in which it is important to observe that recording does give *notice.*

If A conveys land to B, who records, and later A executes a deed of the same land to X, B's rights are superior to X, not because X took with